

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner,  
and

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO,

Exclusive  
Representative.

CASE NO. RA-03-225

DECISION NO. 462

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

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On August 23, 2006, the COUNTY OF HAWAII ("COUNTY") filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit ("Petition") with the Hawaii Labor Relations Board ("Board"). The COUNTY sought to exclude new Position No. OO-04534, Personnel Assistant II, from bargaining unit ("Unit") 03, white collar non-supervisory, because the position is located in the Employee/Labor Relations Division, Department of Civil Service and will perform work that deals with confidential matters, in reviewing and processing personnel transaction documents and providing support for labor negotiations. Michael R. Ben, County Director of Personnel and Petitioner's representative ("Ben"), states in an affidavit attached to the petition, that the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO ("HGEA") concurs with the exclusion of the position from Unit 03.

Based upon a review of the petition and the record in this case, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The COUNTY OF HAWAII is a public employer, as defined in Hawaii Revised Statutes ("HRS") § 89-2, of employees, including the employees included in and excluded from Unit 03.
2. The HGEA is the exclusive representative, as defined in HRS § 89-2, of employees in Unit 03.

3. According to the position description for Personnel Assistant II, Position No. OO-04534, the position is generally supervised by the Personnel Program Specialist and will perform the following duties in the approximate percentages of time:
- a. Transactions/Audit. Audits payroll certification forms involving personnel transactions for accuracy and conformance to civil service laws, rules, regulations, policies, and collective bargaining agreements. Processes payroll certification forms for signature, and distributes approved forms. Audits and posts transactions in the FRESH payroll system to conform to audited payroll certification forms. Edits/amends employee compensation and position history files, as necessary. Advises administrative and support staff and others on requirements of civil service laws, regulations, procedures pertaining to personnel actions, input and maintenance of FRESH system data, salary adjustments and employee benefits. Conducts preliminary studies on appointments, salary adjustments and other personnel matters and recommends action. Conducts on-site field audits to ensure departmental compliance with personnel laws and policies, collective bargaining agreements, and executive orders; and advises departmental personnel on methods to improve their system in the transactions/records area. Verifies and approves County government service and compiles summary of verification forms. Prepares and distributes various personnel reports to agencies and unions. Reviews contracts and Director's certifications for conformance to civil service laws, rules, regulations, policies, and procedures. Researches and compiles data and prepares reports on special personnel matters. Completes and/or reviews personnel file change forms involving input of position information and enters information as necessary into the FRESH system. (50%).
  - b. Record keeping. Records personnel actions to control forms and records. Maintains personnel files of separated employees. Maintains files on computer reports. (35%).
  - c. Other. Answers inquiries and advises departmental officials and others regarding civil service and personnel matters and assists in resolving minor personnel problems. Prepares surveys, scattergrams and reports involving pay rates and position/employee count. Requests data processing services for division. Composes routine correspondence as required; types other materials for division. May supervise other clerical personnel. (15%).

Exhibit B.

4. According to the class specifications, the position assists in the development and execution of a departmental personnel program or assists in the execution of assignments encompassing one or more functional areas in the central personnel agency; and advises on personnel policies and procedures. This is the top class in the personnel clerical assistant series which provides sub-professional support and assistance to the Director and Deputy in the development and execution of a departmental personnel program or to personnel program specialists in the development and execution of a functional program area requiring a practical knowledge of personnel functions and services and the ability to apply standard methods and procedures to accomplish the work process. The class is distinguished from a Personnel Assistant I in that it independently performs a variety of the most difficult sub-professional personnel assignments in the development of a departmental personnel program or central personnel functional program area, including delegated responsibility for matters beyond clerical aspects. The Personnel Assistant I performs a variety of simple to moderately difficult sub-professional personnel assignments in support of a departmental personnel or central personnel agency functional area.

Exhibit C.

5. By letter dated July 19, 2006, Deputy Director of Personnel Ronald K. Takahashi notified HGEA Executive Director Russell Okata of the proposed exclusion of the Personnel Assistant I from Unit 03 as the position was located in the Department of Civil Service, Employee/Labor Relations Division and would perform a variety of sub-professional human resources assignments in support of the County's human resources management program in the areas of employee and labor relations. Assignments will include work relating to the research, review and compiling of data for use in negotiations. On July 24, 2006, HGEA Deputy Director Randy Perreira concurred with the proposed exclusion.

Exhibit A.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject petition pursuant to HRS § 89-6.
2. HRS § 89-6(f) provides, in part, as follows:

The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

\* \* \*

(5) Individual concerned with confidential matters affecting employee-employer relations; . . . .

3. In interpreting the exclusionary language of HRS § 89-6, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In its interpretation of the legislative intent of the above-cited section, the Board, in Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), stated:

Giving the subject statutory phrase its plain and ordinary meaning, the Board believes the Legislature intended to exclude from coverage of Chapter 89, HRS, those individuals who, in the regular course of their employment, are concerned with matters "not intended for the eyes or ears of the rank and file or their negotiating representative" affecting employee-employer relations. We are of the opinion that the confidential matters must directly produce an effect upon or influence or alter employee-employer relations. In almost all conceivable cases, such an employee, if he is not himself a policy maker in the field of employee-employer relations, will be a subordinate of a managerial individual who formulates policy which directly influences or affects changes in employee-employer relations or who meets other criteria of a top-level manager.

*Id.* at 146-47.

In defining what constituted confidential matters, affecting employee-employer relations, the Board noted:

As to the question of the secretness of the data, it should be noted that under our law supervisors may be included in units. Hence, confidential employees must know matters pertaining to employee-employer relations which are not made known to included supervisors. Included supervisors may have authority to exercise independent judgment respecting hiring, transfers, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments and still

be includable. Thus, the material with which employees must be concerned in order to be considered confidential employees under Chapter 89, HRS, must be different than that which is known by supervisors concerning such aforementioned personnel matters...[Cite omitted.]

The Board is of the opinion that the term *employee-employer* relations includes collective bargaining (contract negotiations, application and administration) and all matters affecting employee-employer relations which are made non-negotiable by Subsection 89-9(d), HRS, but upon which the employer is required by Subsection 89-9(c), HRS, to consult with the unions. [Emphasis in original.]

*Id.* at 147.

As summarized in Decision No. 95, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Subsection 89-6, HRS:

1. Working in the regular course of one's employment with matters
2. which are not intended for the eyes and ears of the rank and file and the unions
3. and which matters are capable of producing an affect or influence upon or change in employee-employer relations
4. such work normally being performed as a subordinate to an individual who is a managerial employee who formulates and effectuates management policy in the field of employment relations.

*Id.* at 147.

6. The Personnel Assistant II, Position No. OO-04534 works in the Department of Civil Service, Employee/Labor Relations Division and will perform a variety of sub-professional human resources assignments in support of the employee and labor relations area. The position will perform assignments relating to the research, review, and compiling of data for use in negotiations. As such, these are matters capable of producing an effect or influence in employee-employer relations and are of a confidential nature and not intended

for the eyes and ears of the union. Based on the position's duties and responsibilities, the Board concludes that the position is a confidential position and should be excluded from bargaining unit 03 and coverage under HRS Chapter 89.

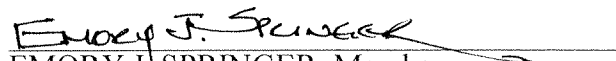
ORDER

Position No. OO-04534, Personnel Assistant II, is hereby excluded from collective bargaining unit 03, and the coverage of HRS Chapter 89 as a confidential employee.

DATED: Honolulu, Hawaii September 5, 2006.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
EMORY J. SPRINGER, Member

  
SARAH R. HIRAKAMI, Member

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